



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,445	11/14/2003	David Alan Burton	END9-2002-0061US1	9621
45216	7590	10/09/2007	EXAMINER	
Kunzler & McKenzie			WALTER, CRAIG E	
8 EAST BROADWAY				
SUITE 600			ART UNIT	PAPER NUMBER
SALT LAKE CITY, UT 84111			2188	
			MAIL DATE	DELIVERY MODE
			10/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary	Application No.	Applicant(s)
	10/713,445	BURTON ET AL.
	Examiner Craig E. Walter	Art Unit 2188

All participants (applicant, applicant's representative, PTO personnel):

- (1) Craig E. Walter. (3) Mr. David Allred (Req. No. 47,254).
 (2) Mr. Bruce Needham (Req. No. 56,421). (4) _____.

Date of Interview: 03 October 2007.

Type: a) Telephonic b) Video Conference
 c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.
 If Yes, brief description: _____.

Claim(s) discussed: 1-26 and 28.

Identification of prior art discussed: Dunham US Pat. 6,269,431 and Manley US PG Pub 2003/0182325.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicant's representatives and Examiner discussed possible changes to the claims to overcome the cited art of record. During the interview, Examiner suggested amending the claims to remove functional descriptive language (i.e. each of independent claims 1, 16 and 24 are defined by "configured to" language), in order to more clearly define the invention. For example in claim 24, rather than code being "configured to" perform the steps recited, the claim must positively recite the code as actually performing each of the recited steps.

Examiner further suggested that Applicant more clearly distinguish the invention (either through argument, amendments to the claims, or both) from the prior art with respect to the concept of adding a newly allocated spare volume to an existing virtual volume, rather than increasing the capacity of an existing virtual volume which appears in the prior art.

Additionally, Examiner suggested to Applicant's representatives that a possible § 101 rejection exists in claim 23 (i.e. a series of "means for" steps which could be directed to software per se based on paragraph 0013, all lines of Applicant's specification).

Lastly, Examiner suggested that a more substantive argument with respect to the patentability of the instant claims (including arguments against all cited art, not just one reference) would be required for Examiner to consider if the properly established prima facie case of obviousness for each of the rejected claims was sufficiently overcome.

Examiner will need to review Applicant's representatives' forthcoming formal amendment before deciding if the newly amended claims are in condition for allowance. If Examiner is sufficiently convinced that the amendment overcomes all rejections, further search and consideration will be required before issuing the notice of notice of allowance.